

**E-FILED ON June 12, 2006**

Annette W. Jarvis, Utah Bar No. 1649  
 RAY QUINNEY & NEBEKER P.C.  
 36 South State Street, Suite 1400  
 P.O. Box 45385  
 Salt Lake City, Utah 84145-0385  
 Telephone: (801) 532-1500  
 Facsimile: (801) 532-7543  
 Email: [ajarvis@rqn.com](mailto:ajarvis@rqn.com)

and

Lenard E. Schwartz, Nevada Bar No. 0399  
 Jeanette E. McPherson, Nevada Bar No. 5423  
 SCHWARTZER & MCPHERSON LAW FIRM  
 2850 South Jones Boulevard, Suite 1  
 Las Vegas, Nevada 89146-5308  
 Telephone: (702) 228-7590  
 Facsimile: (702) 892-0122  
 E-Mail: [bkfilings@s-mlaw.com](mailto:bkfilings@s-mlaw.com)

Attorneys for Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT  
 DISTRICT OF NEVADA**

In re:  
 USA COMMERCIAL MORTGAGE COMPANY,  
 Debtor.

Case No. BK-S-06-10725 LBR  
 Case No. BK-S-06-10726 LBR  
 Case No. BK-S-06-10727 LBR  
 Case No. BK-S-06-10728 LBR  
 Case No. BK-S-06-10729 LBR

In re:  
 USA CAPITAL REALTY ADVISORS, LLC,  
 Debtor.

Chapter 11

In re:  
 USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,  
 Debtor.

Jointly Administered Under  
 Case No. BK-S-06-10725 LBR

In re:  
 USA CAPITAL FIRST TRUST DEED FUND, LLC,  
 Debtor.

In re:  
 USA SECURITIES, LLC,  
 Debtor.

**DEBTORS' RESPONSE TO JOINT  
 MOTION OF COMMITTEES PURSUANT  
 TO 11 U.S.C. § 105(a), 107(b) 1102(b)(3)(A)  
 AND 1103(c), FOR NUNC PRO TUNC  
 ORDER CLARIFYING REQUIREMENT  
 TO PROVIDE ACCESS TO  
 INFORMATION (AFFECTS ALL  
 DEBTORS)**

Affects:

- ☒ All Debtors  
☐ USA Commercial Mortgage Company  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed Fund, LLC  
☐ USA First Trust Deed Fund, LLC

Date: June 21, 2006

Time: 9:30 a.m.

1 Debtors USA Commercial Mortgage Company, USA Securities, LLC, USA Capital Realty  
2 Advisors, LLC, USA Capital Diversified Trust Deed Fund, and USA Capital First Trust Deed  
3 Fund (collectively referred to as “Debtors”), by and through their counsel, hereby respond to the  
4 Joint Motion of Committees Pursuant to 11 U.S.C. § 105(a), 107(b) 1102(b)(3)(A) and 1103(c),  
5 for Nunc Pro Tunc Order Clarifying Requirement to Provide Access to Information (the “Access  
6 to Information Motion”) (docket no. 521, filed June 7, 2006).

### 7 STATEMENT OF FACTS

8 1. The jointly administered Debtors filed voluntary petitions for relief on April 13,  
9 2006 (the “Petition Date”).

10 2. On May 10, 2006, the United States Trustee appointed four separate committees in  
11 these Chapter 11 cases: (a) the Committee of Equity Security Holders of USA Capital First Trust  
12 Deed Fund, LLC (the “First Trust Deed Committee”), (b) the Committee of Holders of Executory  
13 Contract Rights Through USA Commercial Mortgage Company (the “Executory Contracts  
14 Committee”), (c) the committee of Equity Security Holders of USA Capital Diversified Trust  
15 Deed Fund, LLC (the “Diversified Trust Deed Committee”), and (d) the Unsecured Creditors’  
16 Committee for USA Commercial Mortgage Company (the “Unsecured Creditors Committee”)  
17 (collectively referred to as the “Committees”).

18 3. On June 7, 2006, the Committees filed the Access to Information Motion in which  
19 they moved the Court for an order (a) clarifying and providing that the Committees are not  
20 authorized or required, pursuant to newly enacted section 1102(b)(3)(A) of the Bankruptcy Code,  
21 to provide access to confidential and other non-public proprietary information, or to privileged  
22 information, to their respective constituencies, and (b) establishing certain procedures by which  
23 the Committees may provide information to and solicit and receive comments from their  
24 respective constituencies and thereby satisfy their duty under section 1102(b)(3) of the Bankruptcy  
25 Code.

26 4. As of June 12, 2006, the First Trust Deed Committee, the Diversified Trust Deed  
27 Committee and the Unsecured Creditors Committee had all executed or were in the process of  
28 executing confidentiality agreements with the Debtors. These confidentiality agreements are the

1 same form, except for the names of the parties, and were negotiated at arms length. The  
2 Executory Contracts Committee has thus far refused to execute the same form of confidentiality  
3 agreement with the Debtors.

#### 4 **MEMORANDUM**

5 The Debtors generally support the Access to Information Motion and the Committees  
6 efforts to establish an information protocol as the means by which the Committees are to provide  
7 information to and receive and solicit comments from the respective members of each  
8 Committee's constituency, thereby satisfying their duties under section 1102(b)(3)(A) and (B) of  
9 the Bankruptcy Code.

10 However, to the extent the Access to Information Motion could, in any way, be construed  
11 as requiring that access to confidential information be given to the Executory Contracts  
12 Committee, which has yet to execute a confidentiality agreement with the Debtors, or to any other  
13 Committee member refusing to sign a confidentiality agreement, the Debtors object to the Access  
14 to Information Motion on that limited basis. The Debtors further object to the Access to  
15 Information Motion to the extent that it may require different procedures for determining  
16 confidential information or different rules for disseminating confidential information as this would  
17 be unwieldy, unduly burdensome and unfair to the Debtors.

18 Three of the Committees have entered into confidentiality agreements with the Debtors, all  
19 of which are in the same form, and the Debtors are in the process of starting to share confidential  
20 information with those Committees. However, the Executory Contracts Committee has thus far  
21 refused to execute the form of confidentiality agreement that was agreed to by the other  
22 Committees. It makes absolutely no sense for the Executory Contracts Committee to be allowed  
23 to execute a different form of confidentiality agreement than that executed by the other  
24 Committees which would impose different or more stringent obligations on the Debtors. Rather,  
25 the same requirements and protections governing the sharing of confidential information should  
26 apply to all of the Committees. Indeed, it would be a very awkward situation if the "confidential  
27 information" that the Debtors turned over to three of the Committees was subject to a different  
28 interpretation than the "confidential information" that was turned over to the Executory Contracts

1 Committee.

2 Furthermore, the Debtors agree with that part of the Access to Information Motion which  
 3 seeks clarification from the Court that the Committees will not be required to provide access to  
 4 confidential or other non-proprietary information to their respective constituencies. However, the  
 5 Access to Information Motion also contemplates the possibility that confidential information may  
 6 be turned over to a Committee constituent in very limited circumstances. To the extent the  
 7 Access to Information Motion does not already so require, the Debtors assert that such information  
 8 should only be provided to the constituent if it agrees to enter into a confidentiality agreement  
 9 relating to that information and further agrees to take any other necessary action to protect the  
 10 confidentiality of the information it receives.

# 11 CONCLUSION

12 Based on the foregoing, Debtors respectfully request that the Access to Information  
 13 Motion be granted subject to the limitations set forth herein.

14 Respectfully submitted this 12<sup>th</sup> day of June, 2006

15 /s/ JEANETTE E. MCPHERSON

16 Lenard E. Schwartz, Nevada Bar No. 0399  
 17 Jeanette E. McPherson, Nevada Bar No. 5423  
 18 SCHWARTZER & MCPHERSON LAW FIRM  
 19 2850 South Jones Boulevard, Suite 1  
 20 Las Vegas, Nevada 89146

21 and

22 Annette W. Jarvis, Utah Bar No. 1649  
 23 RAY QUINNEY & NEBEKER P.C.  
 24 36 South State Street, Suite 1400  
 25 P.O. Box 45385  
 26 Salt Lake City, Utah 84145-0385  
 27  
 28